



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Clendennen *et al.*

Application No.: 09/811,093

For: Melon Promoters for Expression
of Transgenes in Plants

Group Art Unit: 1638

Examiner: Mehta, A.

Atty. Docket No.: 4257-0025.30

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REPLY (37 CFR § 1.111)

Introductory Comments

This is responsive to the office action mailed October 1, 2003 (paper no. 28). It is believed that no fees are due, but if this belief is incorrect, authorization is hereby granted to have any fees required for consideration of this Reply, and any accompanying submission, charged to deposit account no. 50-1108.

Remarks

Status of claims

Claims 1, 5, 7, 9-12, 15, 19, and 20-23 are pending. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. The remaining claims are rejected under 35 USC § 112.

Objection to Specification

In part 3 of the office action, the specification was objected to on the basis that the amendment filed August 5, 2002, which added SEQ ID NO:46, introduced new matter into the disclosure. The Examiner alleged that SEQ ID NO:46 "sets forth a nucleotide sequence that was determined after the filing of the instant application." However, SEQ ID NO:46 is the same sequence originally published in GenBank in February 1997 as Accession no. Z70522, and was referenced on page 11, line 29 of the application as filed. It is true that since the original 1997 publication, the GenBank record that discloses this sequence has changed (e.g. to update journal publication information). However, the